

COPY OF PAPERS
ORIGINALY FILED

Attorney Docket no: PHO-0002 DIV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

7/31

In re Application of:

Wachter et al.

Serial No.: 09/072,963

Filed: May 5, 1998

For: Method For Improved Selectivity In Photoactivation)
And Detection Of Molecular Diagnostic Agents

Examiner: Eleni M Mantis Mercader

Art Unit: 3737

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: the Assistant Commissioner for Patents, Washington, D.C. 20231 on June 27, 2002
(Date of Deposit)

Rachelle Hannerquist
Name of applicant, assignee, or Registered Rep.
Rachelle Hunt 6-27-02
Signature Date

Commissioner for Patents
Washington D.C. 20231

June 27, 2002

PETITION TO WITHDRAW HOLDING OF ABANDONMENT
-OFFICE ACTION NOT RECEIVED

Sir:

PETITION

1. Applicants hereby petition to withdraw the holding of abandonment in this case, on the basis that the Office Action forming the basis of the abandonment was not received.
2. I hereby state:
 - (a) The Office Action indicated in the Notice of Abandonment of June 17, 2002, as mailed on March 15, 2000, was not received.
 - (b) A search of the file jacket and the docket records in my office indicate that this Office Action was not received.

TECHNOLOGY CENTER R37005

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JUL 17 2002

EVIDENCE IN SUPPORT OF PETITION

3. I attach a copy of the docket record (under seal)¹ for that period of time, the individual docket record for that file, the client docket sheet (under seal) for files of that client (which include this file, PHO-0002 DIV) for the relevant time period and the front page of the file where the non-received Office Action would have been entered had it been received and docketed. If our firm had received this office action, it would have been listed on these documents. I maintain the client docket sheet and enter the information on the front cover of the patent file. I did not receive the Office Action and therefore no Office Action for this file was entered by my on the client docket sheet or patent file. Our docket clerk receives the office actions and enters the information on the computer that produces the docket sheets and history of the file. See attached declaration of Kathrina Cotner, our docket clerk, in support of this motion
4. Because I had received no office action on this file, I filed a Status Inquiry on April 30, 2001, a second status request on July 12, 2001 and a third status request on February 27, 2002. However, it was only on June 21, 2002 that I received a Notice of Abandonment and learned that an Office Action issued on March 15, 2000 and that I had not received it.
5. Attached herewith is our docket clerk Kathrina Cotner's declaration in support of this petition.

¹Documents included herein under seal are proprietary material of this client and other clients of our firm. Accordingly, it is requested that these documents not be made available to the general public.

6. In consideration of these submissions, it is respectfully requested that the holding of abandonment be withdrawn.

PETITION FEE

7. The petition fee is paid as follows:
 X Enclosed please find a check for \$130.00
8. Please charge our deposit account 50/1039 for any deficiency or credit this account for any overpayment or refund for this petition.

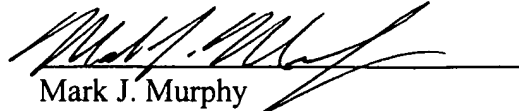
REQUEST FOR REFUND OF PETITION FEE

9. As no defect exists in Applicant's previous submission, a refund of the petition fee submitted herewith is respectfully requested.

REQUEST FOR ACKNOWLEDGMENT OF WITHDRAWAL OF ABANDONMENT

10. Acknowledgment of the active status of this application is respectfully requested.
Favorable consideration is earnestly solicited.

Respectfully submitted,


Mark J. Murphy
Registration No. 34,225

COOK, ALEX, McFARRON, MANZO,
CUMMINGS & MAHLER, Ltd.
200 West Adams Street-Suite 2850
Chicago, Illinois 60606
(312) 236-8500

Enclosures:

1. Declaration of Kathrina Cotner
2. Docket Sheet for June 2, 2000-August 1, 2000 (under seal)
3. PHO-0002 DIV file record (under seal)
4. Photogen docket sheets dated April 7, 2000 and May 15, 2000 (under seal)
5. Cover of front page of file for PHO-0002 DIV

CLIENT M00250
MATTER NO. 00012
BILL CODE 0324

FILE NO. PHO-0002 DIV
ATTORNEY EDM/MTM
CLIENT REF. NO. _____

APPLICATION OF

ERIC WACHTER, et al
WALTER G FISHER
H. CRAIG DEES

TITLE

METHOD FOR IMPROVED SELECTIVITY IN
PHOTOACTIVATION AND DETECTION OF MOLECULAR
DIAGNOSTIC AGENTS
EXECUTED _____ FILED May 5, 1978
PRIORITY DATE _____ SERIAL NUMBER 09/072,963

ASSIGNMENT

Executed _____ Interest _____
Reel _____ Frame _____ Recorded _____

AMENDMENTS

OFFICIAL ACTIONS	DUE	FILED
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

ALLOWANCE

PATENT

Allowed _____	Number _____
Three Months Expire _____	Date _____
Issue Fee Sent _____	_____

Remarks _____

Related Application Data: _____

PHO-0002 DIV
FILE NO.



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Washington D.C. 20231

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(Date of Deposit)

Rachelle Hammerquist
Name of applicant, assignee, or Registered Rep.
[Signature] 10-27-02
Signature Date

**DECLARATION OF KATHRINA COTNER IN SUPPORT OF
PETITION TO WITHDRAW HOLDING OF ABANDONMENT
-OFFICE ACTION NOT RECEIVED**

June 25, 2002

JUL 17 2002

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1. I, Kathrina Cotner, am the current docket clerk for the law firm Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.

2. I was not the docket clerk for the firm in March or April, 2000. However, I did work at the firm and am familiar with the docketing procedures done at that time. The procedure then was the same as the procedure I followed when I became the docket clerk soon thereafter.

3. Our procedure is as follows:

- a. When the mail arrives every day, the receptionist sorts out all of the communications from the PTO and gives them to the docket clerk.
- b. The docket clerk then enters each office action into the computer file for that

application. A weekly docket sheet is then produced using those files and listing the 3 month response date for all office actions received (and the 4th, 5th and 6th month dates for actions not responded to by the expiration of the 3rd month). The docket sheet is then generated and passed out to each of the attorneys. Mark Murphy would have received one listing the Photogen files and office actions, including this office action if we had received it.

- c. The docket clerk then passes out the office actions to the attorney responsible for handling the application. Mark Murphy would have received any office action for this application.
- d. I have included herein the docket sheet (under seal) for the relevant time period. If we had received an Office Action for this file dated March 15, 2000, it would have been listed as having a three month response date of June 15, 2000. As can be seen from the attached docket sheet, there is no such listing.
- e. I also printed out the enclosed computer record for this file. If we had received an office action for this application, it would have been listed in this file.

- 4. Based on the above, I can only conclude that we did not receive an office action for this application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by

fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 6/25/02


Kathrina Cotner